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AKERMAN SENTERFITT
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OFFICE OF PETITIONS

In re Application of	:	
Eberhard, Fritz, et al.	:	
Application No. 10/018,623	:	DECISION ON PETITION
Filed: March 22, 2002	:	
Attorney Docket No. 3993-002	:	

This is a decision on the petition, filed December 21, 2006, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to a Notice of Allowance and Fees Due on or before May 10, 2006. A Notice of Abandonment was mailed on August 3, 2006. In response, on December 21, 2006, the present petition was filed. While petitioner request that the abandonment be withdrawn, a petition under 37 CFR 1.137(b) was also filed.

Petitioner indicates that the issue fee was timely filed using a certificate of mailing dated May 10, 2006. In support petitioner provides a copy of the Issue Fee transmittal letter, which bears a certificate of mailing dated May 10, 2006, and a copy of the facsimile transmission receipt therefor.

The file record does not include the originally submitted paper. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time

has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

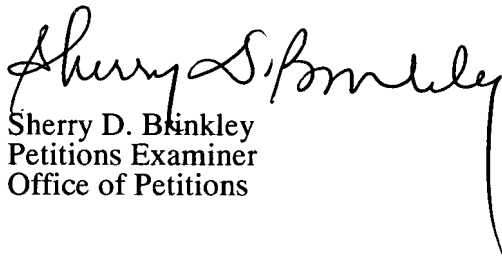
The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Notice of Allowance and Fee Due is hereby withdrawn and the application restored to pending status.

The petition under 1.137(b) is dismissed as moot. Under the circumstance, no petition fee was charged to counsel's deposit account.

The copy of the reply received with the petition will be accepted in place of the reply shown to have transmitted by facsimile on May 10, 2006.

The application is being referred to the Office of Publications to be processed into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions